

**Letter of Findings Number: 09-0743P**  
**Negligence Penalty**  
**For the Years 2006, 2007, 2008**

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**ISSUE**

**I. Tax Administration–Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

**STATEMENT OF FACTS**

Pursuant to a sales and use tax audit of the years 2006, 2007, and 2008, the Indiana Department of Revenue ("Department") assessed additional use tax, penalty, and interest. Taxpayer did not protest the assessment of tax, but protests the negligence penalty. Taxpayer did not request a hearing on this matter, therefore this Letter of Findings is written based on the information in Taxpayer's file. Additional facts will be discussed as necessary.

**I. Tax Administration–Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of a penalty.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has a good history of compliance. Taxpayer has demonstrated that, under the circumstances, it has demonstrated sufficient reason to waive the penalty. However, Taxpayer is on notice that going forward non-payment of sales tax on non-exempt purchase of fixed assets is subject to penalty.

**FINDING**

Taxpayer's protest is sustained.

*Posted: 02/24/2010 by Legislative Services Agency*

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